

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 01, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICHARD FABEL,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

2:20-MC-0001-SAB

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

On April 17, 2020, Magistrate Judge Rodgers filed his Report and Recommendation to Deny Motion for Return of Property, ECF No. 7. Movant Richard Fabel filed his Objections to the Report and Recommendation on May 13, 2020, ECF No. 9. Although untimely, the Court reviewed and considered Mr. Fabel's objections.

Mr. Fabel seeks return of his property that was seized sometime in 2006. He filed a motion in the Western District of Washington in 2016. The motion was denied without prejudice for lack of jurisdiction because the alleged property was seized in the Eastern District Washington. More than three years later, Mr. Fabel filed his motion in the Eastern District of Washington.

//

//

//

Magistrate Judge Rodgers applied the six-year statute of limitations set forth in 28 U.S.C. § 2401(a)¹ to Mr. Fabel's Rule 41(g) motion and concluded that Mr. Fabel's Motion was untimely. Numerous other courts, identified in Magistrate Judge Rodgers' Report and Recommendation, have also applied the six-year statute of limitations to Rule 41(g) motions. Magistrate Judge Rodgers was correct in concluding that Mr. Fabel's Motion is untimely pursuant to 28 U.S.C. § 2401(a). Contrary to Mr. Fabel's argument, the six-year statute of limitation applies regardless of whether the United States sought forfeiture of the seized property.

Accordingly, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** Magistrate Judge Rodger's Report and Recommendation to Deny Motion for Return of Property, ECF No. 7, in its entirety.
2. Mr. Fabel's Motion for Return of Property, ECF No. 1, is **DENIED**.
3. The District Court Executive is directed to enter judgment in favor of the United States and against Richard Fabel.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order, provide a copy of this Order to Richard Fabel and counsel, and close the file.

DATED this 1st day of June 2020.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
United States District Judge

¹ 28 U.S.C. § 2401(a) provides, "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues."